
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations relate to provisions of the Companies Act 1985 (“the 1985 Act”), the Companies (Northern Ireland) Order 1986 (“the 1986 Order”) and the Companies Act 2006 (“the 2006 Act”) which refer to the “authorised minimum” share capital requirement for public companies.

There is a definition of “the authorised minimum” in section 763(1) of the 2006 Act, which is £50,000 or the prescribed euro equivalent. Regulation 2 prescribes, for the purposes of this definition, the amount in euros which is to be treated as equivalent to the sterling amount of the authorised minimum. The prescribed euro equivalent is [euro]65,600.

Regulations 3 and 4 provide for the application of the authorised minimum requirement for the purposes of particular provisions of the 1985 Act and the 1986 Order which refer to it. The provisions in question have the effect of requiring a public company to re-register as a private company where certain events cause the nominal value of its allotted share capital to fall below the authorised minimum. The events are the making of a court order confirming a reduction of capital or a mandatory cancellation of shares in particular circumstances. Regulation 3 deals with the situation where, taking account of the effect of the order or the cancellation of shares, the company has or will have shares denominated in more than one currency. It requires the nominal value of the company's allotted share capital to be treated as being below the authorised minimum if, applying the methods of calculation in regulation 3, both the sterling value is below £50,000 and the euro value is below [euro]65,600.

The methods of calculation in regulation 3 involve converting the value of currencies into sterling or euros at the appropriate spot rate of exchange. “The appropriate spot rate exchange” is defined in regulation 4 and the definition refers, among other things, to rates published by the Financial Times. The published rates are available from www.ft.com.

If, taking account of the effect of the court order or the cancellation of shares, the company's allotted share capital is denominated solely in sterling or solely in euros, then it is the definition of “the authorised minimum” in section 763 of the 2006 Act which will apply for the purpose of determining whether the nominal value of that share capital falls below the authorised minimum for the purposes of the relevant provisions of the 1985 Act and the 1986 Order.

Regulation 5 deals with registration by the registrar of companies of court orders confirming the reduction of public companies' share capital and with re-registration of public companies as private companies where a mandatory cancellation of shares has the effect of bringing the nominal value of the company's allotted share capital below the authorised minimum. It enables the registrar to assume, in certain circumstances, that the authorised minimum requirement is no longer satisfied by the company.

Regulation 6 enables the courts, in specified proceedings, to make a determination in certain circumstances about the exchange rates to be applied in working out whether a public company satisfies the authorised minimum requirement.

Regulation 7 prevents anyone from being liable as a result of reliance, for the purposes of these Regulations, on an exchange rate published by the Financial Times. It also prevents liability arising if an erroneous exchange rate published by the Financial Times is relied on for the purposes of the Regulations. Finally, it excludes liability for acts or omissions leading to the Financial Times not publishing an exchange rate capable of being relied on for the purposes of the Regulations.

An impact assessment in respect of these Regulations has been produced and copies are available from the Company Law and Governance Directorate, Department for Business, Enterprise and Regulatory Reform, 1 Victoria Street, London SW1H 0ET or from www.berr.gov.uk.

Changes to legislation:

There are currently no known outstanding effects for the The Companies (Authorised Minimum) Regulations 2008.